

FCC order required deployment to begin by October 1, 2001, every major wireless service provider sought and received a waiver of that requirement from the FCC. The waivers granted each provider an extension of time but did not relax the accuracy requirement nor extended the ultimate completion date for implementation, which was December 31, 2005 for 95% of all subscribers to have location equipped handsets. Unfortunately, none of the carriers met this deadline. In May 2006, Verizon Wireless was the first wireless provider to meet the 95% threshold. Though this is less an issue of wireless carrier performance than it is about customer choice, most of the wireless providers have now met this threshold.

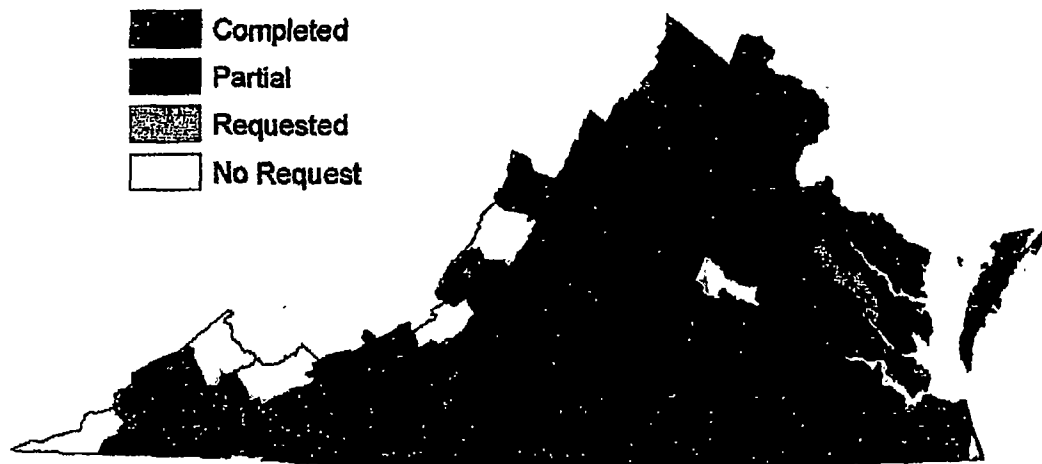


Figure 4 - Wireless E-911 Phase II Status

Wireless service providers are required to provide the Board with monthly status reports. These reports have been mapped to provide a visual status for each provider for Phase I & II (Appendix C). The "Requested" status means that the PSAP has requested service and that it has not yet been installed, but it does not necessarily mean that the project is behind schedule. Wireless providers also expand their service areas into new jurisdictions that have completed Phase II deployment several years ago. In this case, the locality may be shown as "Completed" in the status above, but incomplete in the individual provider status in Appendix C.

#### *Wireless Responsibility*

Section 56-484.16 of the *Code of Virginia* makes clear the General Assembly's intent that wireless 911 calls be answered by the PSAP local where the call is initiated instead of by the State Police. The *Code* required that by July 1, 2003, all localities be directly taking the wireless 911 calls made within their jurisdiction. Rather than just taking the call as required by Code, many localities have opted to deploy Phase I instead. As a result, the success with Phase I deployment translates into success with moving the calls from the State Police to the local PSAP.

At the close of FY2003, 19 localities were still directing their wireless 9-1-1 calls through the State Police. At the close of FY2007, that number had been reduced to 3 localities (Figure 5). All three will take on the wireless calls with the deployment of Phase I, which will likely occur before they are completed with wireline E-911 deployment.



Figure 5 - Responsibility for Wireless 9-1-1

#### **Wireless E-911 Fund**

The Wireless E-911 Fund is generated by a \$0.75 monthly surcharge collected from each wireless customer whose place of primary use is in Virginia. One question the Board is asked annually is whether the surcharge rate should be adjusted. With the changes to the funding process made during the 2006 General Assembly Session, this question requires a different approach to answer than in previous reports. In the past, the funding required was based on the actual costs incurred by the PSAPs and wireless carriers. Determining sufficiency of the fund and appropriate surcharge required a projection of the expected costs that would be incurred during the fiscal year. With large fluctuations and disparity of the initial, non-recurring costs, accurate projections were often difficult.

The 2006 legislative change (described below) modified the funding process to distribute majority of the Wireless E-911 Fund based on a formula. As a result, sufficiency of the surcharge is less relevant except in two instances. First, thirty percent of the Wireless E-911 Fund is earmarked for wireless service cost recovery. In recommending this change, the Board's intent was that this amount be sufficient to fund the known, on-going costs of the providers. Since the providers have historically only collected approximately 26% of the fund, projections of known provider costs indicate that this portion of the fund is sufficient within the current surcharge rate. However, the recent action of the FCC to require accuracy compliance at the PSAP level may impact this. Unfortunately, no fiscal impact analysis was performed before the FCC made this policy decision.

The second instance where the surcharge rate could have a potential impact is with PSAP funding. The localities have come to rely on the wireless E-911 funding source to operate and maintain their

PSAPs. Any reduction to the overall funding would be detrimental to service delivery. The surcharge rate must be sufficient so that the distribution formula results in consistent funding to the locality. Historically, the PSAPs have received forty-eight percent of the Wireless Fund for recurring and operational costs. Since the new process distributes sixty percent of the fund to the PSAPs, the funding level was projected to increase. This increase was intended to provide funding for equipment replacements and upgrades. Under the previous methodology, partial funding was provided for equipment replacements and upgrade in the year they were procured. This made projecting costs in any one fiscal year difficult. Though the new methodology provides greater predictability, it also requires greater fiscal planning by the locality to ensure the funding is available when needed. PSAPs will be eligible for additional assistance through the PSAP Wireless Grant Program, which was included in the 2006 legislative changes and is funded by the remaining ten percent of the Wireless Fund and any remaining carrier funding.

Since FY2007 was the first year for this new funding methodology, it is appropriate to review the funding levels for both the carriers and the PSAP. The total funding received by the carriers for the recovery of costs incurred during FY2007 was \$5,019,411, which was well below the 30% of the Wireless Fund set aside for this purpose (\$11,785,858). The difference will be transferred into the PSAP grant program for FY2008. The PSAPs received a total of \$23,571,716 through the 60% formula distribution and were allocated another \$1,872,040 for the FY2007 PSAP grant programs. This means that the PSAPs received a total of \$25,443,756. While this is nearly the same amount as the funding the PSAPs received in FY2006 of \$25,778,850, it is important to note that this includes \$3,229,377 carried over to FY2006 from the previous fiscal year. When these are subtracted from the FY2006 funding, the funding increased by 13%. A list of funding by locality is provided in Appendix B.

Ensuring an appropriate funding level into the future requires sufficient revenue to be generated. Revenue is difficult to project accurately. Even wireless industry experts have had trouble predicting the growth rate of wireless services. Though current industry subscriber growth rates may result in higher revenue projections, a more conservative estimate of revenue is appropriate, especially in light of the volatility in the telecommunications industry and the economy. Since the actual revenue for FY2007 was about \$46.7 million, each penny of surcharge generates approximately \$620,000 of revenue annually. It is important to note that there are other draws on the Wireless E-911 Fund that reduce the amount of funding available to the PSAPs and wireless service providers. The Division of Public Safety Communications (DPSC) and a portion of the Virginia Geographical Information Network (VGIN) Division are funded through Wireless E-911. Both the DPSC and VGIN programs directly support wireless E-911. Since this funding is contained in the Appropriation Act, it is subtracted before the distribution of funding based on the formulas thus evenly reducing the amount of funding across the three funding programs.

The current biennial budget also includes a \$3.7 million appropriation to the State Police for wireless 9-1-1 call taking. This appropriation also reduces the amount of funding available to the PSAPs and wireless service providers. The wireless 9-1-1 calls are currently being transitioned from the State Police dispatch centers to the local PSAP. Only three (3) localities utilize the State Police for wireless 9-1-1 call taking and they will begin taking the calls directly when E-911 is deployed. Thus, the justification for the State Police receiving Wireless E-911 funding will no longer exist. Additionally, federal legislation was signed into law on December 23, 2004 that requires states, who apply for federal E-911 grant funding (or the PSAPs within the states), to

certify that no E-911 funding was diverted to other areas. A state that has diverted funding shall be ineligible for federal funding for 18 months after the diversion. Though it is unclear if the State Police funding would be considered a diversion, the likelihood of it will increase when they no longer receive the calls.

### **Wireless Funding Process**

The Wireless E-911 Services Board began providing funding to PSAPs and wireless service providers in FY2000. Since FY2000, the Board has approved the distribution of over \$124.3 million to localities and over \$38 million to the carriers. The amount of funding increased each year as more localities moved to implement the service and more deployments occurred (Figure 6). However, in the most recent fiscal years, the amount of funding has stabilized. As the costs have become more stable, the PSAPs have begun receiving a more constant funding level, which is primarily comprised of personnel funding. As a result, the Board recommended a legislative change to implement a formula-based funding process for the PSAPs. This not only made the costs to the Board more predictable, but also reduced much of the bureaucratic paperwork required under the previous funding process. These changes were codified with the passage of Senate Bill 395 during the 2006 General Assembly session.

The new approach to funding splits the Wireless E-911 Fund into three parts. The first part is a sixty percent allocation to be distributed to the localities for PSAP operations. The distribution formula for this portion of the funding is based on the percentage of the PSAPs costs and call load to the total throughout the Commonwealth. Minimum costs and wireless call load percentages are applied to ensure that the smallest PSAPs in Virginia get a fair share of the funding. This funding is distributed to the PSAPs each month based on the wireless E-911 surcharge revenue collected in the previous month. The sixty percent allocation represents an overall increase of funding to the PSAPs since historically they have received approximately 46% of the fund for recurring costs. However, while this funding replaces the funding provided for recurring costs of wireless E-911, it may not cover the non-recurring costs such as equipment replacement. The projected increase in funding (the difference between 46% and 60%) will likely address these non-recurring costs (over the life cycle of the equipment) in larger localities; it will not in many smaller localities. As a result, the Board also recommended the creation of the second partition of the Wireless E-911 Fund, the Wireless E-911 PSAP Grant Funding.

The Wireless E-911 PSAP Grant Funding utilizes a 10% allocation of the Wireless E-911 Fund and is intended to assist the localities with the most need. While the legislation provides the Board with great latitude in the adoption of grant guidelines, the grant focus will be on equipment upgrades and ensuring continuity of the wireless E-911 service into the future. The Board formed a grant committee to develop grant guidelines as soon as the legislation was approved to ensure that funding would be available to the localities as soon as possible. Logistically, it was not possible for the Board to implement the full grant process until FY2008, but the Board accepted emergency grant requests in FY2007 to ensure that no

2000	\$4,316,115	\$396,144
2001	\$7,047,639	\$1,862,736
2002	\$13,930,840	\$3,719,132
2003	\$18,861,283	\$5,288,230
2004	\$16,015,454	\$8,361,966
2005	\$20,086,422	\$8,106,850
2006	\$18,680,037	\$5,371,059
2007	\$25,443,756	\$5,019,411
Total	\$124,381,546	\$38,125,528

locality would lose funding during the transition from the old process to the new.

The grant guidelines, which were approved by the Board on July 12, 2006, were structured to have two categories for funding. The first category, termed Continuity Grants, will focus on maintaining the current services provided by the PSAPs. Continuity grants will receive at least 80% of the funding available in the grant program. Up to 20% of the available grant funding will be utilized for Enhancement Grants, which are the second category of grants. These will be focused on expanding services by looking toward the future of E-911 and helping the PSAPs prepare for it.

In addition to the 10% allocation of the Wireless E-911 Fund, the grant program will also receive the remaining funding from the final part of the Fund, CMRS Cost Recovery. Wireless service providers can seek cost recovery for direct and reasonable costs for the deployment and operation of the wireless E-911 network. Since 60% of the Wireless E-911 Fund is distributed to the localities and 10% is allocated for PSAP grants, 30% remains for this part of the Fund allocation. Any funding remaining in this part of the Fund at the end of the fiscal year will be transferred to the grant program. Any funding remaining in the grant program at the end of the fiscal year will be distributed to the localities in the same manner as the 60% part of the Fund; however, the Board may retain any or the entire amount if a specific need is identified in the next fiscal year.

The Wireless E-911 Services Board continues to be effective in their role of promoting and assisting with wireless E-911 deployment. As a result, Virginia continues to be a nationally recognized leader in E-911. With the changes made in prior sessions, no legislative changes are being proposed for wireless E-911 for the 2008 General Assembly session.

The implementation of statewide wireline enhanced 9-1-1 has progressed with only six (6) localities needing to finish. The most significant barrier to completion is the delays caused by the USPS. The delays will cause additional complexity and cost for the PSAP waiting to deploy. Though some of the localities did not implement E-911 by the July 1, 2003 deadline established in Code, all are working toward full deployment of their E-911 system.

The implementation of wireless enhanced 9-1-1 is also nearing completion. About 99% of all wireless telephone service subscribers now have Phase I service, which provides the caller's telephone number and the address of the cell site processing the call and Phase II service, which provides the longitude and latitude of the caller. Though a few subscribers still need to upgrade their telephone handsets to take advantage of the Phase II service, the infrastructure is in place at the PSAP and within the wireless network to process the call.

The Appropriations Act for the 2006-2008 biennium continues the transfer of \$3.7 million to the Virginia State Police. If this appropriation is not eliminated, it may impact the ability of the Commonwealth and its localities to receive future federal grants for E-911.

The Commonwealth of Virginia has positioned itself well for the new and coming challenges to the E-911 system. The successful partnership between the Board, PSAPs and telecommunications industry established during the wireless E-911 program can now be leveraged to support the future of E-911 as well. It will take the hard work and dedication of all involved to prepare for these

future challenges. Some of which, like Voice over Internet Protocol (VoIP), are already before us. The first step is the comprehensive plan, which the Board will finalize in the coming months.

#### **Appendix A: 911 Deployment Issues**

**Bath County** has been delayed with their deployment of wireline E-911 by construction issues. The County will be requesting a variance for a building permit on October 15, 2007 in order to begin construction on a new PSAP. If the variance is approved, construction will begin directly afterwards with an anticipated completion date of May 2008 for the new facility. A dialogue is currently underway with all involved telecommunications providers in the area to determine the best 9-1-1 network and to verify their E-911 addressing information. The County is working their E-911 equipment vendor to finalizing this contract. It is anticipated that wireline E-911 deployment will be accomplished by the end of the 2008.

**Buchanan County** was very much on target for deploying enhanced 911 in September 2007. However, another unanticipated delay with the U.S. Postal Service (USPS) has slowed data conversion. The County has been proactive in putting a plan into place to ensure that addressing and mapping is being maintained. Data entry has already begun with the local exchange carrier to expedite that conversion process when data is released from USPS. Equipment has been installed at the newly renovated facility and the transition of staff from the Sheriff's office has been completed. Basic 911 calls are being received at the PSAP. A decision was made to move forward with wireless deployment before wireline E-911 is completed. Network provisioning is underway and wireless testing will begin in October. It is anticipated that enhanced wireline deployment will be accomplished by the end of the year.

**Dickenson County** has had Basic 911 for sometime and is actually receiving call data in an unverified format. E-911 deployment has been delayed due to issues with the USPS that have continued for four years. The County is currently in the process of releasing an RFP for an addressing vendor to help resolve the issues. The County and the vendor will be providing the necessary field work and validation and intend to bring the outdated database current, and to keep it current, until the USPS notifies the County that work can commence on its conversion project. The local exchange carrier has committed to working with the County to process applicable data simultaneously with the USPS to expedite the conversion process. Due to the current delay with USPS, impending weather during the upcoming winter months, and generally anticipated project delays, enhanced deployment is anticipated to be completed by October 2008. However, the County will deploy its remaining wireless carrier within the next 90 days.

**Lee County** completed addressing and is in the process of providing data to USPS when notified that there would be a delay in all conversion projects due to an upcoming audit of the national AMS database. The County was already anticipating a slight delay because of other projects awaiting USPS conversion. The County will continue to utilize its current addressing vendor to maintain data integrity during the delay. Renovations to the section of the Court House that will house the PSAP are almost complete. The County will be moving forward with wireless E-911 deployment and this deployment could take place before wireline deployment, which is now estimated for mid 2008.

**Scott County** is currently in the process of data conversion with the USPS with address notification nearing completion and data exchange with the two local exchange carriers taking place. A method

and process to coordinate the exchange of data among the County, USPS, and local exchange carriers was implemented and proved to be successful in maintaining the integrity of the data. The County continues to accept Basic 911 and has deployed wireless 911 with all carriers providing service to the area. It is anticipated that enhanced deployment will have occurred by 1<sup>st</sup> quarter 2008.

**Appendix B - PSAP Funding Data**

PSAP	FY2006 Total	FY2007 Total
Alexandria Police Communications	\$434,617.17	\$476,907.60
Alleghany County	\$46,277.21	\$47,206.24
Amelia County	\$167,781.00	\$45,052.19
Amherst County Emergency Communications	\$41,475.39	\$45,053.00
Appomattox County	\$167,341.18	\$43,556.61
Arlington County PSCC	\$476,480.47	\$568,267.32
Augusta County	\$122,634.87	\$120,900.48
Bath County	\$40,000.00	\$43,556.61
Bedford Communications Center	\$79,933.13	\$82,901.88
Blacksburg Police Communications	\$57,733.88	\$59,253.06
Bland County	\$45,240.00	\$49,294.67
Botetourt County GIS-Communications	\$104,131.14	\$63,433.82
Bristol 9-1-1 Communications	\$96,228.48	\$94,921.03
Brunswick County	\$98,978.92	\$99,360.42
Buchanan County	\$76,487.71	\$43,556.61
Buckingham County	\$56,761.52	\$45,675.92
Campbell County	\$281,966.46	\$282,392.73
Caroline County	\$102,991.81	\$96,053.69
Charles City County	\$101,823.77	\$45,978.14
Charlotte County	\$44,411.48	\$44,830.66
Charlottesville, UVA, Albemarle County ECC	\$551,614.49	\$551,704.22
Chesapeake Police Communications	\$1,439,400.32	\$1,055,316.19
Chesterfield County ECC	\$659,241.87	\$706,974.50
Christiansburg Police Communications	\$82,774.57	\$45,432.50
Clarke County 9-1-1	\$40,260.99	\$44,968.02
Colonial Heights 9-1-1 Communications	\$133,382.67	\$142,975.21
Covington 9-1-1 Communications	\$169,248.97	\$43,766.83
Craig County	\$52,517.16	\$46,002.02
Culpeper Joint 9-1-1 Center	\$54,277.55	\$60,543.19
Cumberland County	\$58,066.66	\$55,942.28
Danville Emergency Services	\$84,592.16	\$95,920.21
Dickenson County	\$41,951.97	\$56,534.42
Dinwiddie County	\$42,080.23	\$44,830.66
Eastern Shore 9-1-1	\$84,041.75	\$93,419.59
Emporia Police Communications	\$45,782.48	\$46,160.54
Essex County	\$40,000.00	\$44,830.66
Fairfax County PSCC	\$3,714,428.81	\$3,950,351.28

PSAP	FY2006 Total	FY2007 Total
Farmville Police Communications	\$87,007.01	\$53,454.12
Floyd County	\$49,988.39	\$59,670.96
Fluvanna County	\$53,020.94	\$55,076.84
Franklin County	\$70,597.59	\$64,964.87
Franklin Police Communications	\$45,456.37	\$46,152.15
Frederick County PSCC	\$48,049.21	\$50,975.58
Fredericksburg Police Communications	\$184,852.62	\$241,737.56
Giles County	\$163,989.64	\$44,628.84
Gloucester County	\$40,000.00	\$45,418.78
Goochland County	\$46,922.42	\$44,830.66
Greene County	\$58,393.89	\$66,820.57
Greensville Sheriff's Communications	\$148,362.09	\$44,830.66
Halifax County	\$74,172.86	\$71,283.56
Hampton Police Communications	\$464,583.70	\$495,101.25
Hanover County ECC	\$323,471.36	\$353,896.73
Harrisonburg - Rockingham ECC	\$218,089.87	\$183,825.52
Henrico County	\$906,536.50	\$934,415.70
Highland County	\$40,000.00	\$43,556.61
Hopewell Police Communications	\$46,139.62	\$47,188.13
Isle of Wight Sheriff's Office	\$50,889.47	\$53,851.60
James City County ECC	\$301,378.99	\$117,230.53
King & Queen County	\$81,611.54	\$47,441.69
King George County	\$53,869.41	\$62,494.18
King William County	\$77,030.05	\$48,106.60
Lancaster County	\$43,640.96	\$47,052.91
Lee County	\$40,393.16	\$43,891.55
Loudoun County Fire Communications	\$370,184.34	\$419,940.46
Louisa County Sheriff's Office	\$47,596.02	\$49,232.36
Lunenburg County	\$55,721.51	\$60,228.81
Lynchburg ECC	\$289,692.98	\$251,483.64
Madison County	\$43,425.97	\$44,830.66
Martinsville - Henry County 9-1-1	\$140,539.35	\$145,001.20
Mathews County	\$59,925.00	\$44,830.66
Mecklenburg County	\$130,820.51	\$92,066.00
Middlesex County	\$78,035.67	\$44,895.56
Montgomery County	\$47,562.33	\$47,517.60
Nelson County	\$169,926.02	\$44,576.46
New Kent County	\$43,087.10	\$45,601.84
Newport News Police Communications	\$524,726.14	\$569,505.27
Norfolk Emergency Services	\$1,336,232.98	\$1,427,354.36
Northumberland County	\$42,407.21	\$45,083.76
Norton 9-1-1 Communications	\$40,200.73	\$44,993.47
Nottoway County	\$129,473.06	\$48,665.30
Orange County Communications	\$105,621.22	\$97,301.10
Page County EOC	\$82,282.16	\$79,914.48



PSAP	FY2006 Total	FY2007 Total
Patrick County	\$53,228.79	\$54,895.10
Petersburg Police Communications	\$260,803.33	\$223,855.12
Pittsylvania County Emergency Management	\$42,582.98	\$44,606.10
Poquoson Police Communications	\$97,049.48	\$51,735.08
Portsmouth Police Communications	\$556,482.00	\$375,022.96
Powhatan County Emergency Services	\$60,026.30	\$62,585.53
Prince George County	\$48,284.83	\$48,738.11
Prince William County PSCC	\$760,981.92	\$860,033.90
Pulaski County	\$42,653.11	\$47,261.14
Radford Police Communications	\$87,604.24	\$44,528.73
Rappahannock County	\$41,975.32	\$47,660.17
Richmond County	\$45,022.90	\$45,788.34
Richmond Police Communications	\$900,991.19	\$941,660.39
Roanoke Communications Dept.	\$475,626.49	\$510,511.97
Roanoke County Police Communications	\$215,839.09	\$225,552.64
Rockbridge Regional PSCC	\$102,365.69	\$94,209.39
Russell County	\$40,000.00	\$49,988.76
Salem Police Communications	\$89,399.74	\$98,781.84
Scott County	\$105,719.25	\$45,809.60
Shenandoah County Emergency Communications	\$100,749.77	\$107,206.68
Smyth County 9-1-1	\$45,769.87	\$50,274.27
Southampton County	\$47,505.35	\$49,312.77
Spotsylvania County Emergency Communications Dept.	\$112,956.52	\$126,615.58
Stafford County Sheriff's Communications	\$215,514.41	\$228,894.68
Staunton 9-1-1 Communications	\$151,400.40	\$82,090.76
Suffolk Police Communications	\$173,558.77	\$184,230.67
Surry County	\$46,230.25	\$46,271.84
Sussex County	\$48,986.75	\$48,736.12
Tazewell County	\$40,000.00	\$44,648.66
Twin County E-911	\$85,160.87	\$100,115.70
Vinton 9-1-1 Communications	\$43,885.93	\$46,248.59
Virginia Beach Communications Division	\$2,178,887.30	\$1,303,591.17
Warren County	\$47,940.91	\$49,910.23
Warrenton - Fauquier Joint Communications Center	\$83,806.03	\$95,325.36
Washington County	\$46,255.66	\$51,518.94
Waynesboro 9-1-1 Communications	\$101,127.33	\$106,389.87
West Point 9-1-1 Communications	\$40,000.00	\$44,830.66
Westmoreland County	\$50,282.59	\$53,205.31
Williamsburg Public Safety Communications Center	\$40,549.99	\$44,830.66
Winchester Fire/Rescue Communications	\$97,447.06	\$44,864.51
Wise County	\$58,918.37	\$60,216.65
Wythe County	\$43,495.41	\$50,667.96
Wytheville Public Safety E-911	\$45,598.84	\$48,947.03
York County Fire Communications	\$413,319.54	\$174,800.76

### Alltel Status

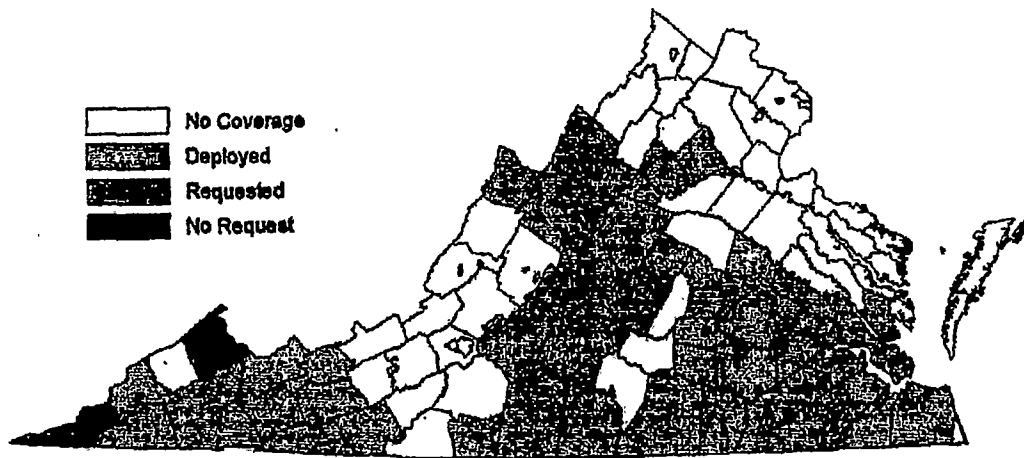


Figure 7 - Alltel Phase I Status

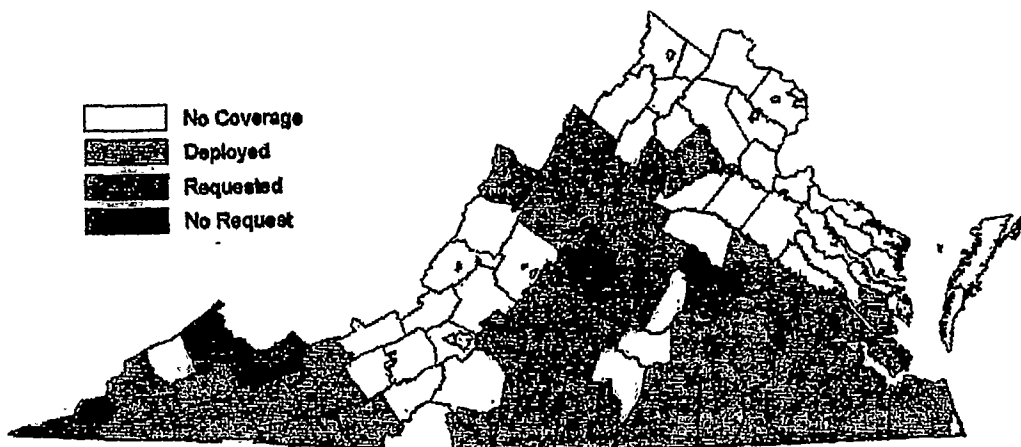


Figure 8 - Alltel Phase II Status

## AT&T Status

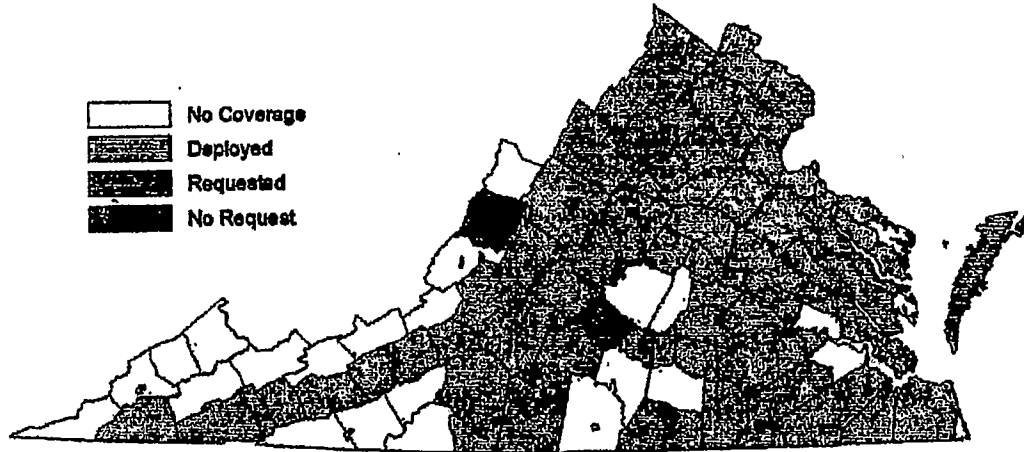


Figure 9 - AT&T Phase I Status

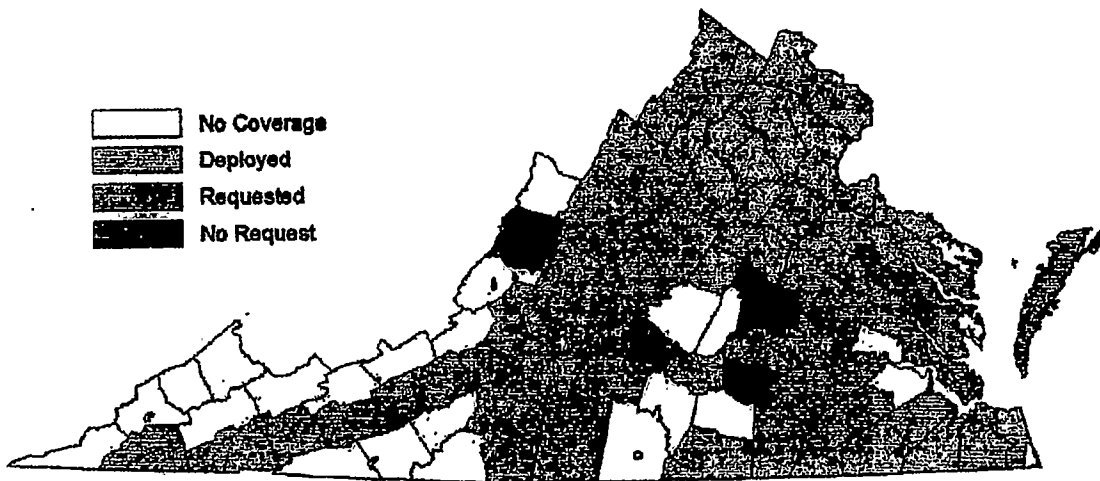
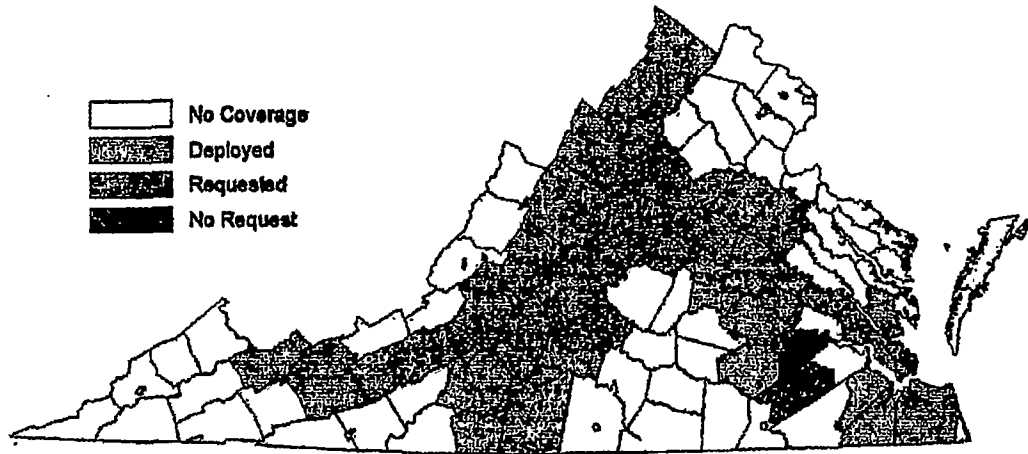
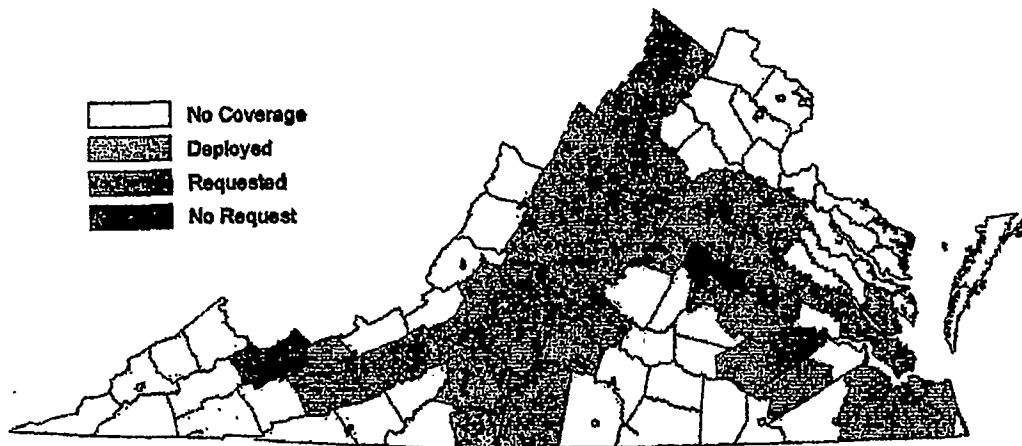


Figure 10 - AT&T Phase II Status

## *nTelos Status*

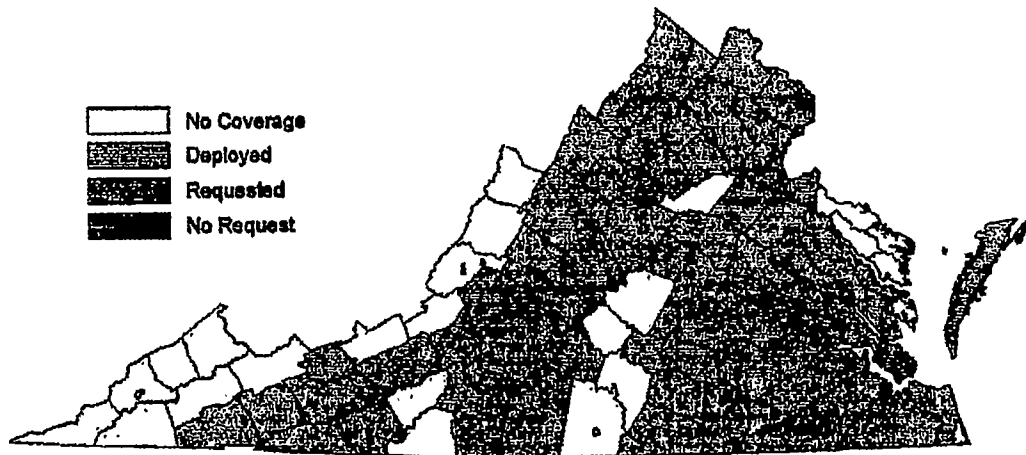


**Figure 11 – nTelos Phase I Status**

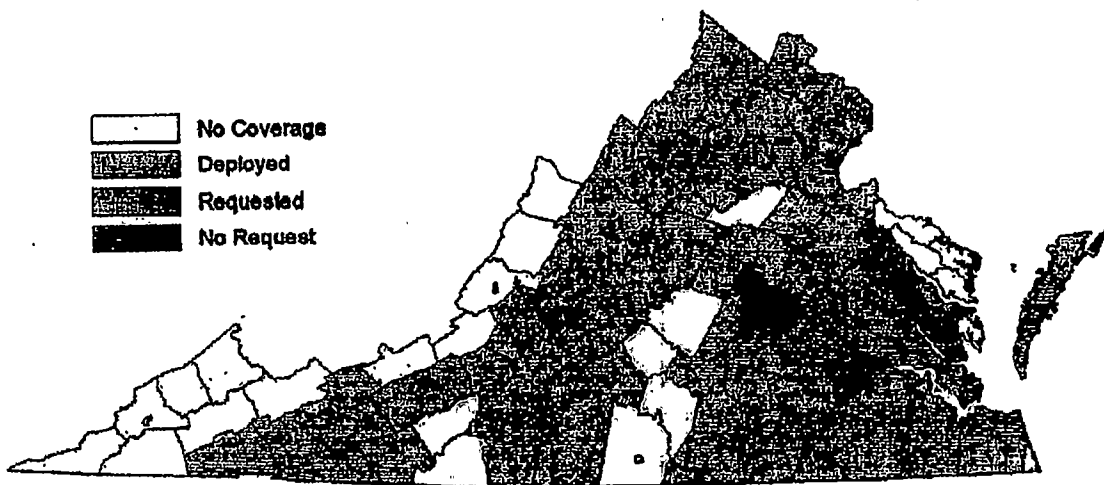


**Figure 12 – nTelos Phase II Status**

## ***Sprint Status***

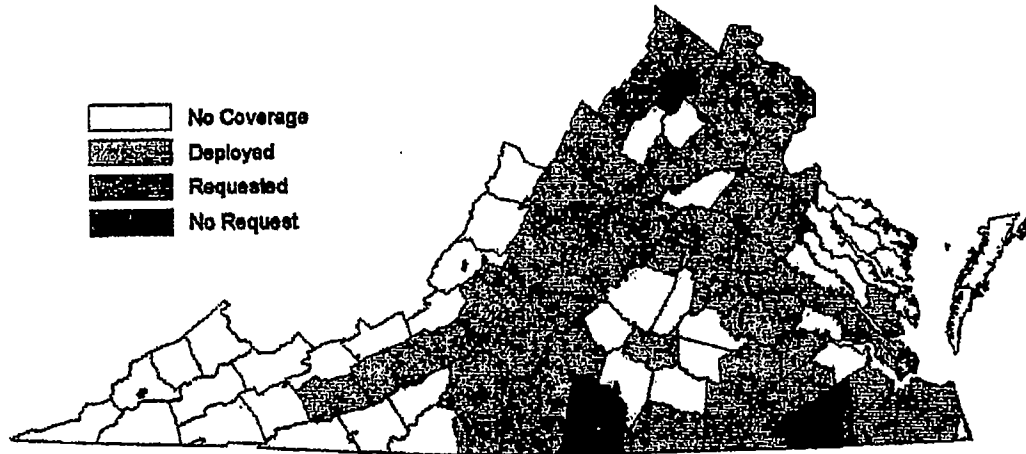


**Figure 13 – Sprint Phase I Status**

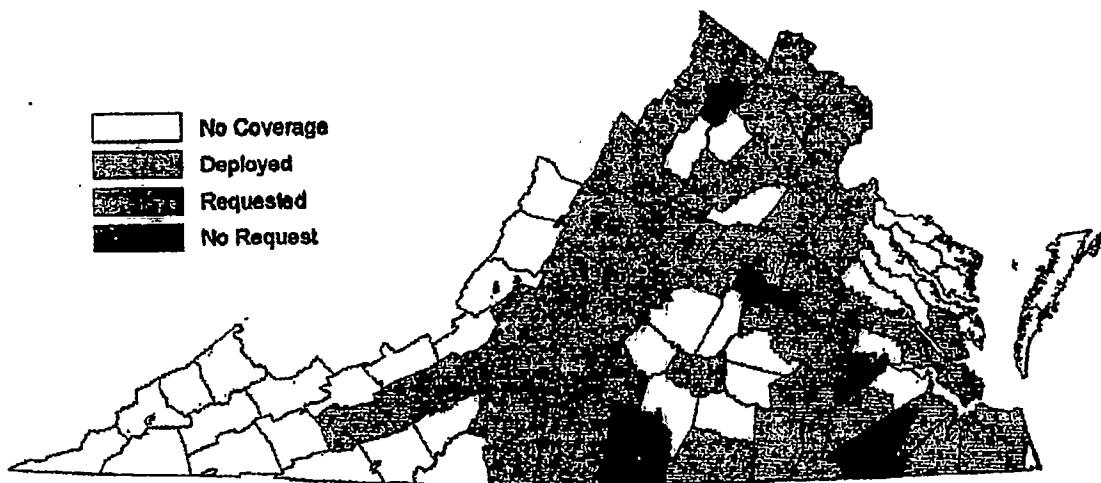


**Figure 14 – Sprint Phase II Status**

## ***T-Mobile Status***



**Figure 15 – T-Mobile Phase I Status**



**Figure 16 – T-Mobile Phase II Status**

## U.S. Cellular Status

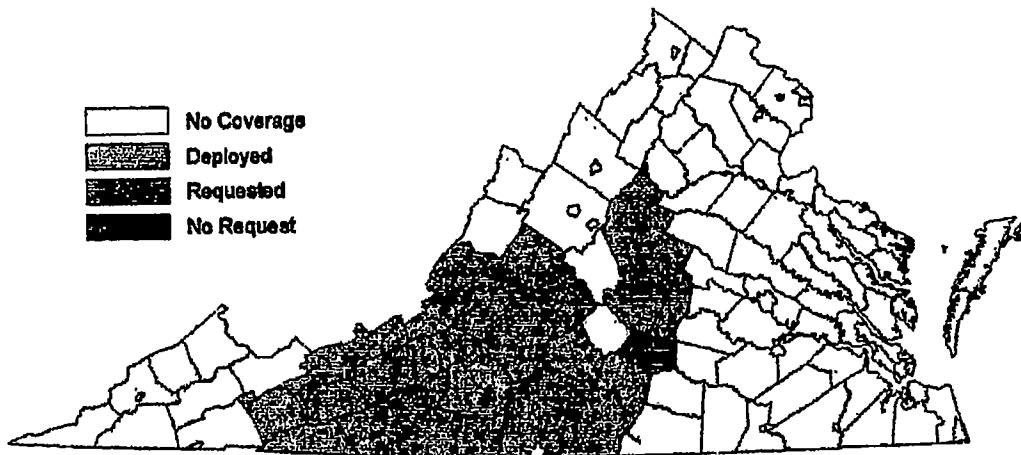


Figure 17 – U.S. Cellular Phase I Status

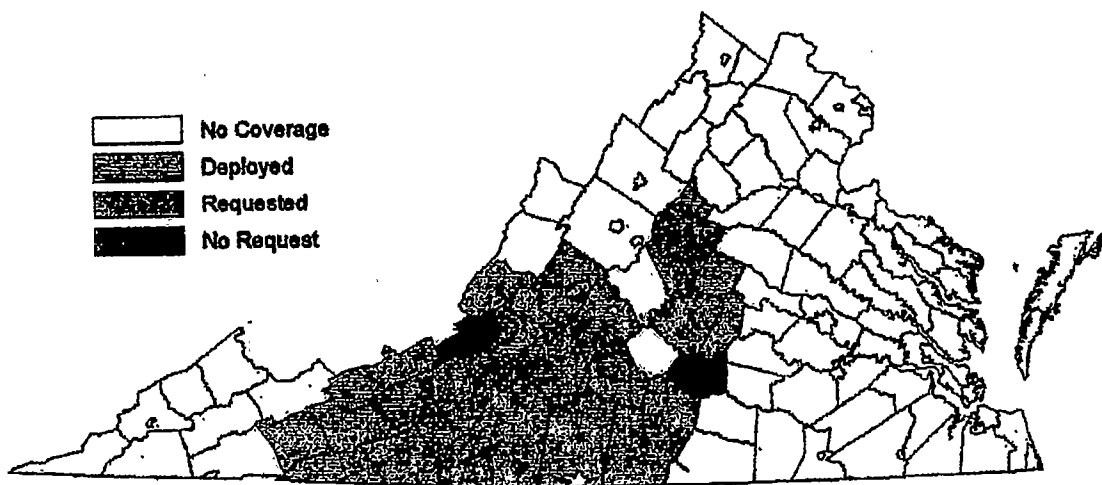


Figure 18 – U.S. Cellular Phase II Status

## Verizon Wireless Status

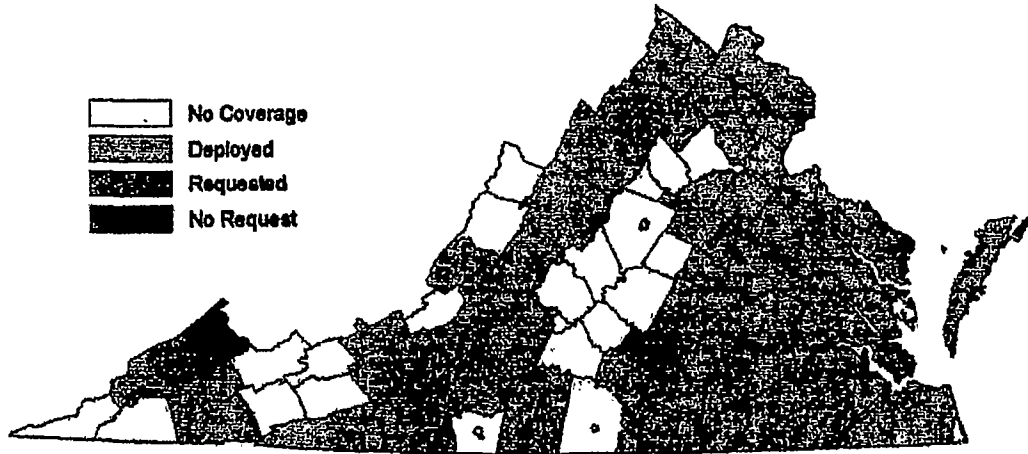


Figure 19 – Verizon Wireless Phase I Status

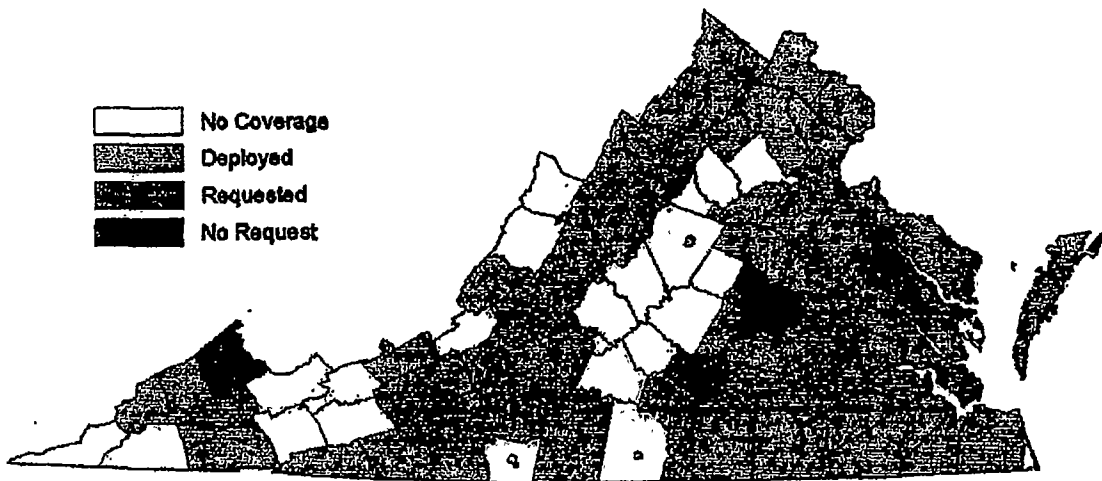


Figure 20 – Verizon Wireless Phase II Status





# EXHIBIT 3

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of the Verizon Telephone Companies	)	WC Docket No. 08-49
for Forbearance Pursuant to	)	
47 U.S.C. § 160(c) in Cox's Service Territory in	)	
Virginia Beach Metropolitan Statistical Area	)	

**DECLARATION OF SEAN WAINWRIGHT**

1. My name is Sean Wainwright. I am Vice President for Consumer Sales and Marketing for Cavalier Telephone Corporation ("Cavalier"). My business address is 2134 W. Laburnum Ave., Richmond, VA 23227. I joined Cavalier in April of 2007, and am responsible for marketing and product development for all residential services at Cavalier, including circuit-switched voice, DSL, Internet Protocol Television (IPTV), and other data services. I have more than 15 years of experience in sales and marketing strategy, positioning and execution. I have factual knowledge relating to the information described in this Declaration.

2. Cavalier's business model is based on access to DS0 loops and—where necessary—local transport, both as unbundled network elements ("UNEs") provided by Verizon. This model has been a successful basis for providing innovative and valuable services to consumers, as shown by Cavalier's recent roll-out of video programming services in Richmond and other markets. Cavalier has built or acquired network facilities in the mid-Atlantic and elsewhere that represent almost \$1 billion in investment over the past seven years. Because of Verizon's pending forbearance petition, I have had to examine whether Cavalier could continue to operate under this business model if forbearance were granted in Virginia Beach.

3. Cavalier continues to be an innovator in Virginia Beach and elsewhere and Verizon's Petition puts in jeopardy new services that serve the public interest. For example,

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Cavalier recently announced the launch a new service bundle: C2. This new bundle provides Unlimited Local and Long Distance Phone service with 12 Free Calling Features, coupled with un-throttled Hi-Speed Internet service enhanced with Google Apps for a non-promotional rate of \$50/month. The Google Apps product suite was named 2007 product of the year by PC World magazine. Millions of consumers and business customers around the world rely on the speed, ease of use, and innovative features of Google applications to organize their lives and stay in touch with friends and colleagues. Cavalier is the first company in the telecommunications industry to launch all of these services to their customers. All of Cavalier's new and current Hi-Speed Internet subscribers will now have access to popular communications tools such as Cavalier Gmail, Google Calendar for shared scheduling, Google Product Search for shopping, Google Picasa for photos, and the a Personalized Start Page. Additionally, Cavalier provides exclusive streaming content from ESPN 360, Disney, ABCNow, and more through the Cavalier Portal as part of the C2 bundle. Nearly 8.7 million people are eligible for Cavalier's Hi-Speed Internet service.

4. Cavalier serves nearly **[Begin Highly Confidential]** **[End Highly Confidential]** small business or enterprise customers throughout Virginia Beach. Cavalier services large, medium and small businesses, including hospitals, fire departments, and schools. The large majority of Cavalier's business customers are small and medium companies. Cavalier provides a comprehensive suite of voice and data products to Virginia Beach area business customers. Small businesses enjoy Cavalier's high speed Internet service which is delivered over Cavalier's network using ADSL 2+ technology. Cavalier also is a popular choice for Virginia Beach business customers that require the highest bandwidth. Cavalier provides 10mb Ethernet pipes, site to site private line and full internet T1s. Cavalier's small business packages offer a

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10-15% savings to consumers on average based upon comparable service offerings from Cox or Verizon.

5. Cavalier is one of the few remaining, if only, CLECs in the country that continues to serve residential customers. Cavalier offers its residential customers competitively priced voice and data services to meet their communication needs. Cavalier's residential services include basic dial tone, long distance, dial-up Internet access and DSL (ADSL2+, MVL2, GSHDSL). Cavalier has [Begin Highly Confidential] [End Highly Confidential] customers throughout the areas of Virginia Beach where Cox provides service. Notably, Cavalier is the only CLEC remaining in Virginia Beach to serve residential customers, including traditional customers of plain old telephone service or "POTS" and those without cell phones, high speed internet, or cable. Cavalier is the only competitive provider of landline communications for this market segment in Virginia Beach. Many of Cavalier's customers do not have access to alternative services. They do not have access because the services in question are bundled with expensive add-ons designed for higher income customers, because the services require additional and costly technologies such as broadband in order to function, and because they require credit cards, credit, or contracts and up-front payments or expenditures. Moreover, Cavalier provides the lowest price unlimited long distance phone service in Virginia Beach. Cavalier's prices for phone service, including voicemail and unlimited long distance, is on average about \$10 a month cheaper than either Verizon or Cox. For the typical Cavalier customer, the "pure mass market customer," landline remains the only viable alternative and it must be landline service provided by a company that will accept those with lower credit scores.

6. In addition, Cavalier is also the only triple-play telecommunications alternative to Cox and Verizon for residential service in Virginia Beach. Cavalier is an industry pioneer in a

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competitive TV service that uses MPEG 4 video compression to provide over 150 channels of television over Cavalier's existing DSL network—all delivered over traditional copper loops. Unlike Verizon's FiOS, Cavalier is able to serve older neighborhoods with copper facilities, so Cavalier provides service in the inner city, not just the suburban fringe.

7. Cavalier is aiding the Commission's goal of increasing the number of broadband subscribers by its ADSL 2+ broadband offering to customers who would not otherwise achieve such service. The Commission has frequently addressed the need to improve the deployment and use of broadband services to all Americans. Verizon's re-filed Petition seeks to derail Cavalier's deployment of affordable, high-speed, competitive broadband services in Virginia. Verizon's Petition would likely cause rate increases for broadband services to Virginia Beach residential and small business consumers.

8. Verizon's petition is based on the faulty assumption that residential competition is thriving in Virginia Beach. Over the last four years, the number of competitors offering residential landline service has diminished significantly. ATT and MCI, once the first and second largest competitors in Virginia, have been absorbed by SBC and Verizon and become ILECs. ATT does not compete with Verizon in Virginia; instead it cedes the residential consumer market to Verizon just as Verizon cedes residential consumer market to ATT in states such as Michigan and Texas. MCI has abandoned its "neighborhood" of local residential customers. Within Verizon's territory, the MCI "neighborhood" is now owned by Verizon, by virtue of its merger with MCI. No longer does MCI provide innovative voice packages as an alternative to the ILEC's traditional offerings; instead MCI has discontinued offering services independent from Verizon. As a result, throughout Verizon's Virginia Beach territory,

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consumers seeking local landline residential services are left with only Verizon, Cox and Cavalier.

9. Verizon distorts the number of carriers who are actually providing service to customers in the Cox service area of Virginia Beach.<sup>1</sup> Cavalier does not generally encounter anyone competing for enterprise customers other than Verizon and Cox in its business dealings. Cavalier recently undertook an internal audit to determine which carriers we were gaining/losing customers to, over the last three months. In the past year, Cavalier determined that of the residential or small business customers who chose to switch their service from another carrier to Cavalier in Virginia Beach, **[Begin Confidential]** **[End Confidential]** of those customers had their telephone numbers ported from either Verizon or Cox. The next largest number of port-outs came from AT&T, which constituted less than **[Begin Confidential]** **[End Confidential]** of the total number of customers switching to Cavalier overall. Other carriers showed similarly low penetration in Virginia Beach, based on my observation of where customers are coming to Cavalier from. At the same time, less than **[Begin Confidential]** **[End Confidential]** of former Cavalier customers chose to port their landline number to "cut-the-cord" wireless or use a VoIP provider. Verizon's anecdotal evidence citing websites and marketing materials does not portray an accurate picture of who is really serving customers in Virginia Beach. Clearly, the market in Virginia Beach for consumers, either business or residential, is primarily limited to Cox, Verizon and Cavalier. Without Cavalier, Virginia Beach is left with a duopoly and higher prices, less choice and less innovation.

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<sup>1</sup> Verizon claims that other than Verizon and Cox, many companies are providing voice and data services to enterprise, residential or small business customers. Verizon lists traditional telecommunications carriers like AT&T, Level 3, PAETEC, Sprint, Qwest; Fixed wireless providers like Telecom Transport Management, Inc., AccessNet, Atrius Technologies, NET Telcos; and, VoIP providers like Vonage, BroadVoice, ZingoTel, ITC, Lingo, bbtelsys, Packet8, etc. Verizon only cites websites and promotional materials as proof that such companies are actually providing service in Virginia Beach.

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10. As noted above, Cavalier has focused primarily on the mass-market (residential and small business) segment of the telecommunications and information services markets. This type of customer is extremely price-sensitive. In order for a new, lesser-known competitor like Cavalier to make inroads in this segment of the market, we must offer products that are comparable in features and quality to those offered by the incumbent provider, Verizon, at a significantly lower price.

11. The table attached as Exhibit A to my Declaration compares the price for basic residential telephone service packages currently being charged by Verizon, Cox, and Cavalier in Virginia Beach. As this table shows, Cavalier's current prices are significantly lower than comparable offerings from Verizon, Comcast, and Cox.

12. Cavalier has carefully evaluated strategic alternatives if the Commission were to grant the forbearance requested by Verizon in WC Docket No. 08-49. As stated in the Declaration of Jim Vermeulen, Cavalier has found that there are not likely to be any wholesale DS0 loop alternatives other than Verizon, and Verizon does not offer, and has no intention to offer, commercially reasonable wholesale DS0 loop access. That is not surprising, given that Cavalier is able to provide consumers with innovative voice, Internet, and video programming services over copper loops, at lower prices than Verizon.

13. Even if Cavalier is able to obtain continued access to Verizon loops after forbearance, it would likely incur significantly increased cost for those loops, which it would have to pass through to our customers in the form of higher prices. Although Verizon has not provided any information in their petitions which would indicate future prices under a commercial agreement, based upon information submitted to Cavalier under its "Wholesale Advantage Program," unbundled loop prices could rise up to \$8 to \$12 per month. As indicated



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in the attached table, even a modest increase in costs would dramatically impact, and perhaps eliminate, our pricing advantage vis-à-vis Verizon and Cox. In my opinion, our customers would not tolerate a large price increase and we would lose so many customers to our competitors that it would put the viability of our business plan in these markets into question.

14. Cavalier is aware that Verizon is seeking forbearance from regulatory obligations only in the Cox service area of the Virginia Beach MSA and has excluded the following counties from its request: Suffolk, Isle of Wight, Surry and Matthews County in Virginia and Currituck County, North Carolina. However, while this distinction is critical to Verizon's gaming of the forbearance test, it is meaningless from an economic standpoint. Should forbearance be granted in the geographic portions of the Virginia Beach MSA which Verizon is seeking, Cavalier would not have an economic justification to continue service in the excluded areas it already serves or expand service further into those five counties in the future. Should the Commission grant forbearance in the cherry-picked areas in Virginia Beach that Verizon is seeking, the effect on competitors will be to grant forbearance in the entire Virginia Beach MSA, regardless of how Verizon spins it. Customers in both the "included" and "excluded" areas will suffer as their competitive options will diminish post-forbearance. Given the geographic and economic realities of the business world, Cavalier must view these five counties as part and parcel of the Virginia Beach MSA for the purpose of weighing whether it is economically feasible to do business there. As evidence of this, the Commission needs to look no further than Omaha- where it is my understanding that McLeod will soon exit the entire MSA not just those areas where forbearance was granted.

15. Cavalier has concluded that if the Commission grants the requested forbearance relief, it will likely sell its assets, or otherwise cease or limit its operations, in Virginia Beach.